VIRGINIA LAW REGISTER.

EDITED BY W. M. LILE.

GEORGE BRYAN, ASSOCIATE EDITOR.

Issued Monthly at $5 per Annum. Single Numbers, 50 Cents.

Communications with reference to CONTENTS should be addressed to the EDITOR at University Station, Charlottesville, Va.; BUSINESS communications to the PUBLISHERS.

THIS number of the REGISTER contains a few pages less than usual, due to the omission of one of the opinions of the court after the number was printed—the omission being at the request of the judge who prepared the opinion, and who desired to give further consideration to certain parts of it.

WE acknowledge the receipt of a communication from a valued correspondent, correcting the statement editorially made in our last number, that but two local bar associations exist in Virginia—the one in Richmond and the other in Danville. We now learn that local bar associations exist in Norfolk, Portsmouth, Newport News and Hampton, and probably in Roanoke and Bristol. We are glad to be able to add to the list, and to express the hope that there are counties yet to be heard from.

HON. JOHN GARLAND POLLARD, of the Richmond bar, so well known as the compiler of the Supplement to the Code of 1887 bearing his name, will, at the conclusion of the current extra session of the General Assembly of Virginia, offer to the profession, if the responses to his proposition justify him in undertaking it, an Annotated Code of Virginia. One of its several valuable features will be a syllabus of every decision bearing upon the section under consideration—not merely, as in the Code itself, a reference to the volume, without the name of the case or suggestion of its ruling. In other words, the book will be quite up to the requirements of modern legal bibliography. We have seen specimen pages of the proposed work, and cordially recommend it in scope, detail and comprehensiveness.

WE publish elsewhere a communication from Jefferson Chandler, Esq., an eminent member of the Washington (D. C.) bar, addressed

to the Honorable John Goode, the distinguished President of the late Constitutional Convention of Virginia, in which the learned writer discusses the question, now much agitated in this State, how far the State may regulate the right of suffrage.

Mr. Chandler reviews the question, however, not so much from the standpoint of the State, as from that of the Federal Government, by questioning the validity of any amendment of the Federal Constitution which detracts from the sovereign right of each State to regulate the suffrage according to its own notions. The argument made is, that under Article V of the Federal Constitution, a majority of the States may, in the method there prescribed, *amend* the Constitution, but may not, under the guise of an amendment, alter or repeal any of its *fundamental dogmas*. The power to amend does not include the power to reconstruct or revolutionize. The clause in Article V, declaring that "no State without its consent shall be deprived of its equal suffrage in the Senate," limits the power of destroying the State, and is a distinct recognition of the residuary sovereignty in the State, as fixed by the original Constitution itself, and preserves that sovereignty, as thus left by the original Constitution, against any encroachment by way of amendment without the consent of each State affected. Hence, in so far as the XIV Amendment undertakes to regulate the elective franchise in any State, or to punish the State for not conforming to the Federal mandate as expressed in the Amendment, it is invalid.

We commend to our readers a careful study of Mr. Chandler's argument. It is most ingeniously presented, and, as far as our limited research goes, is a new interpretation of the powers of amendment vested in the majority of the States.

In the case of *H. W. Williams Transp. Line* v. *Darius Cole Transp. Co.* (56 L. R. A. 939), it is held by the Supreme Court of Michigan that breach of warranty of the speed of a steamboat is no ground for rescinding an executed contract to purchase it, and suing for a return of the purchase price.

This decision is in accordance with the great weight of authority, namely, that on an executed sale of a specific chattel, accepted by the buyer, a warranty of quality, in the absence of fraud, does not go to the essence of the contract, but is collateral to the main contract, and a breach thereof, unless the contract otherwise provide,

does not entitle the buyer to rescind—his remedy being an action for damages, or recoupment in an action for the price. Benjamin on Sales (Bennett's 6th ed.), pp. 887, 904. Some of the authorities, however, sustain the buyer's right of recission in such case. *Sparling* v. *Marks,* 86 Ill. 125; *Smith* v. *Hale,* 158 Mass. 178, 183; *Milliken* v. *Skillings,* 89 Me. 180; *Optenberg* v. *Skelton* (Wis.) 85 N. W. 356; *Thompson* v. *Harvey,* 86 Ala. 519.

The true rule ought to be, that if the thing bought be valueless to the buyer for the known purpose for which he purchased it, he should be allowed to rescind and return; but if it in fact answers his purpose in a measure, though not so fully as if the warranty were unbroken, or if the seller were ignorant of the special purpose for which the article was intended, then recission should be denied, and the buyer should be confined to his action for damages.

To illustrate: If an engine be the subject of sale, and be warranted twenty horse power, the seller knowing that an engine of less power would not suit the buyer's purposes; the latter should be allowed to rescind in case the warranty as to the power be broken. If, on the other hand, the seller be ignorant of the special purpose of the buyer, or if the engine, with less horse power, may still serve the buyer's purpose, though less efficiently, then the remedy should be an action for damages, and not recission. This distinction will be found in many of the cases, though in few, if any, is it expressly made.

The rule of the principal case should not be confused with the even more widely accepted rule that where the stipulation as to quality or fitness (often loosely termed a warranty) is a condition —as where the contract is executory, or where the goods are nonspecific and are ordered by description—the buyer may refuse to accept the goods on breach of the condition. *Pope* v. *Allis,* 115 U. S. 363, 371; Benjamin on Sales, p. 553 *et seq*; Id. 891 *et seq.*